IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2227 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAKEEL AHMAD @ SAHIL NAZIR AHMAD SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2227 of 2004

MR EE SAIYED for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 28/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under under Article 226 of the Constitution of India for

appropriate writ, order or direction for quashing and setting aside an order dated 26.8.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that one FIR was filed against the petitioner before DCB police station on 22.4.2003 at CR No.15/2003 for offences punishable under Sections 386, 307 and 120-B of IPC as well as under section 25 of the Arms Act and under section 135 of the Bombay Police Act.

3. It was also alleged against the petitioner that a couple of persons have rendered statements against the petitioner and their names were not disclosed to him. On the strength of the aforesaid solitary registered case and two unregistered cases, the petitioner was found to be a dangerous person and accordingly, he was detained with a view to prevent him from carrying on his illegal activities so as to raise a threat to public order. The petitioner has challenged the said order of detention on several grounds. It has been stated that the order of detention has been passed very late after registration of the aforesaid offences and, therefore, the order of detention may be treated to be illegal on the said grounds.

4. On receiving the petition, rule was issued and in response to the notice of rule, Ms. Mita Panchal, learned AGP appears on behalf of the respondents. I have heard the learned Advocates for the parties and have perused the papers.

5. Learned advocate for the petitioner has argued that the offence registered against the petitioner was dated 22.4.2003. Thereafter the petitioner was arrested on 23.4.1003. However, the order of detention at page 7 came to be passed on 26.8.2003. That therefore, there was a delay of four months in passing the order of detention. On the other hand, learned AGP contended that thereafter the statement of witnesses were recorded and they have been verified by the detaining authority and, therefore, the date of statement should be considered as the last date for the purpose of considering the delay in passing the order. On going through the said statements it is shown that the statements were recorded on 10.8.2003 and 11.8.2003. However, it appears that they were verified by the detaining authority on 22.8.2003. On this aspect, there is no affidavit filed by the

detaining authority to explain the said delay.

6. Therefore, the matter has to be considered from the date of registration of the offence. Record shows that the offence was registered in the last week of August, 2003 and the order was passed four months thereafter. It is well settled that an order of detention is required to be passed with a view to immediately prevent the detenu from carrying on his illegal activities. Therefore, if there is a delay of four months in passing the order of detention, it can be said that there was no immediate need on the part of the detaining authority to detain the detenu. Therefore, the order of detention suffers from the vice of delay. Even otherwise a solitary offence has been registered against the petitioner which shows that the petitioner cannot be treated to be a habitual offender and consequently it cannot be treated to be a dangerous person. In that view of the matter, there was no justification on the part of the detaining authority in passing the order of detention against the petitioner. Therefore, the order of detention must fall on the aforesaid consideration and consequently it would not be necessary to consider the other grounds suggested by the petitioner in the petition. It is, therefore, clear that the order of detention is illegal on the aforesaid consideration and, therefore, it is required to be struck down.

7. For the foregoing reasons, this petition is allowed. The impugned order dated 26.8.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp